

**DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED**

REFERENCE: DEC 24/34

NAME OF APPLICANT: Christopher Dunne
C/O D. Clear Construction Ltd.
Moorerow, Gaybrook,
Mullingar, Co. Westmeath.

ADDRESS FOR CORRESPONDENCE: Moorerow, Gaybrook, Mullingar, Co. Westmeath.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to Whether or not the land reclamation, improvement works through raising level of field by app. 800mm (0.8m) on 1.34 hectares is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Monasteroris, Edenderry, Co. Offaly.

WHEREAS a question has arisen as to whether or not the land reclamation, improvement works through raising level of field by app. 800mm (0.8m) on 1.34 hectares is or is not development and is or is not exempted development at Monasteroris, Edenderry, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 27th March 2024.

AND WHEREAS Christopher Dunne requested a declaration on the said question from Offaly County Council;

AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to:

- (a) Section 2, 3(1), 4(1)(h) and 4(2)(a), of the Planning & Development Act 2000, as amended.
- (b) Article 8c of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that:

- The land reclamation, improvement works through raising level of field by app. 800mm (0.8m) in some parts of the land is **development and is exempt development** at Monasteroris, Edenderry, Co. Offaly.

MATTERS CONSIDERED In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



Administrative Officer

23/4/24.

Date

Note: Any person issued with a Declaration may on payment to An Bord Pleanála, 64 Marlborough Street Dublin 2 of such fees as may be described refer a declaration for review by the board within four weeks of the issuing of the Declaration.

Planning Report

Section 5 Declaration

File Reference:	<i>Dec. 24/34</i>
Question:	<i>Whether or not the land reclamation, improvement works through raising level of field by app. 800mm (0.8m) on 1.34 hectares is or is not development and is or is not exempted development.</i>
Applicant:	<i>Christopher Dunne</i>
Correspondence Address:	<i>Moorerow, Gaybrook, Mullingar, Co. Westmeath</i>
Location:	<i>Monasteroris, Edenderry, Co. Offaly</i>

1. Introduction

The question has arisen as to whether or not the land reclamation, improvement works through raising level of field by app. 800mm (0.8m) in some parts of the land is or is not development and is or is not exempted development.

2. Background

The site is zoned under Enterprise and Employment within the Edenderry Local Area Plan 2023-2029. The site is located adjacent a flood risk zone of high probability. A proposal for the Edenderry Proposed Link Road (Monasteroris & Clonmullen, Edenderry) is directly adjacent the site.

3. Site History

On site

Ref 07348: McGill Construction Ltd were refused permission for the construction of a 442sq.m. care centre, a 624sq.m. community centre, a 704sq.m. ambulance base, a 250sq.m. midoc centre, an 872sq.m. creche, and 106 no. residential units. the residential units consist of 2 no. 2 storey 3 bed semi-detached units of 110.8sq.m., 4 no. 2 storey 3 bed detached units of 110.8 sq.m., 24 no. 3 storey 4 bed units of 115.5sq.m., 20 no. 2 storey 3 bed semi-detached units of 96 sq.m., 28 no. 2.5 storey 4 bed semi detached units of 133.5sq.m., 16 no. 2 storey 3 bed terraced units of 96sq.m. and 12 no. 2 bed apartments of 70sq.m. in 4 no. 3 storey blocks. the development includes parking facilities & bus set-down area, all landscaping works, services and associated infrastructure and multiple accesses via a new section of the local distributor road and access ways proposed in the edenderry local area plan 2005 all on lands at monasteroris, to the south of the proposed local distributor road, to the northeast of st. patrick's wood.

Ref 071459: McGill Construction Ltd were granted permission (conditionally) for the construction of a 442sq.m. care centre, a 624sq.m. community centre, a 704sq.m. ambulance base, a 250sq.m. midoc centre, an 872sq.m. creche, and 105no. residential units. the residential units consist of 12 no. 2 bed apartments in 4 no. 3 storey blocks, 3 no. 3 bed 2 storey detached houses, 24 no. 4 bed 3 storey terraced houses, 28 no. 4 bed 2.5 storey semi-detached houses, 22 no. 3 bed 2-storey semi-detached houses and 16 no. 3 bed 2 storey terraced houses. the main access will be provided via a new section of the local distributor road with linkages to st. patrick's wood. the development includes bus set-down area, all landscaping works, services and all associated infrastructure.

4. Legislative Context

In order to assess whether or not the proposed works constitute exempted development, regard must be had to the following items of legislation:

Statutory Provisions

Section 2 (1) Planning and Development Act 2000, as amended, states as follows:

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3 (1) Planning and Development Act 2000, as amended, defines development.

“development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4 - Exempted Development

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act including:

Section 4 (2) (a) - The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that -

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development.*

Regulatory Provisions

8C Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

5. Proposal by Applicants

The Applicant has advised of proposed land reclamation, improvement works through raising level of field by app. 800mm (0.8m) in some parts of the land. The applicant has indicated that the works are for agricultural purposes. A letter from Teagasc indicates that soil will be sourced “with suitable peat soil off the adjacent road development” and maps of where the soil is located have been provided which are in the immediate vicinity.

6. Appropriate Assessment

A screening exercise for an appropriate assessment has been carried out and it is concluded that the development is unlikely to have significant effects on any European sites. Please see attached report under Appendix A.

7. Conclusion

It is recommended that the Applicant be advised that the proposed development is development and is exempted development.

Declaration on Development and Exempted Development

Section 5 of the Planning and Development Act 2000 (as amended)

WHEREAS a question has arisen as to whether or not the land reclamation, improvement works through raising level of field by app. 800mm (0.8m) on 1.34 hectares is or is not development and is or is not exempted development at Monasteroris, Edenderry, Co. Offaly.

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Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.



Enda Dolan
Assistant Planner

Date: 22nd April 2024



Ed Kelly A/Senior Executive Planner

Date: 23rd April 2024

APPENDIX A

APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS



Screening is used to determine if an AA is necessary by examining:

- If the plan / project is directly connected with / necessary to the management of the European site.
- If the effects will be significant on a European site in view of its conservation objectives, either alone / in combination with other plans / projects.

Planning Authority: OCC

Planning Application Ref. No: DEC 24/34

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether or not the land reclamation, improvement works through raising level of field by app. 800mm (0.8m) in some parts of the land is or is not development and is or is not exempted development.		
Site location:	Monasteroris, Edenderry, Co. Offaly		
Site size:	0.816ha	Floor Area of Proposed Development:	Not given
Identification of nearby European Site(s):	The Long Derries, Edenderry SAC – 4.97km		
Distance to European Site(s):	As above – all as crow flies		
The characteristics of existing, proposed or other approved plans / projects which may cause interactive / cumulative impacts with the project being assessed and which may affect the European site:	None		
Is the application accompanied by an EIA?			No: X
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
The Long Derries SAC – Features of interest include: <ul style="list-style-type: none"> • Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] 			
The conservation objectives / qualifying interests of the site and the factors that contributes to the conservation value of the site: (which are taken from the European site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)			

Site Name: The Long Derries SAC SAC Site Code: 000925
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000925.pdf>

(C) NPWS ADVICE:

Advice received from NPWS over phone: None Received

Summary of advice received from NPWS in written form (ATTACH SAME): None Received

(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:

(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).

If the answer is 'yes' to any of the questions below, then the effect is significant.
 (Please justify your answer. 'Yes' / 'No' alone is insufficient)

Would there be...	
... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... a reduction in habitat area on a European site?	There will be no reduction in the habitat area. The site is sufficient distance from the European site.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?	None likely due to the location and type of development. The site is sufficient distance from the European site.
Would the project interfere with mitigation measures put in place for other plans / projects. [Look at <i>in-combination effects</i> with completed, approved but not completed, and proposed plans / projects. Look at projects / plans within and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.	No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.

(E) SCREENING CONCLUSION:

Screening can result in:

1. AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.
2. No potential for significant effects / AA is not required.
3. Significant effects are certain, likely or uncertain. (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.

Therefore, does the project fall into category 1, 2 or 3 above? Category 2

Justify why it falls into relevant category above: There would be no likely significant impact on the European site from the proposed development due to the scale of the proposed development and the separation distance between the subject site and European Site.

Name: 
 Enda Dolan

Position: Assitant Planner Date: 22nd April 2024.